



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

AP-100165

Matter of: Leamington Motor Inn--Request for
Reconsideration
File: B-227927.2
Date: August 20, 1987

DIGEST

Decision to dismiss protest against solicitation provisions is affirmed because, to the extent protest is against the solicitation's alleged lack of clarity, it was untimely filed after bid opening and to the extent it is against the acceptance of a bid from a non-union firm it is without merit as the inclusion in a solicitation of the current contractor's collective bargaining agreement is only for the purpose of setting the wage rates which must be paid, not to bind bidders to all the terms of the agreement.

DECISION

Leamington Motor Inn requests reconsideration of our notice of July 9, 1987, dismissing its protest. We affirm the dismissal.

Leamington's protest concerned invitation for bids (IFB) No. DAKF61-87-B-0017, issued by the Army for meals and lodging for military recruits. Leamington was the incumbent contractor providing these services. In its protest, filed after a contract was awarded to the Fair Oaks Motel, Leamington argued that the solicitation was defective because it included a copy of the collective bargaining agreement between Leamington and its employees' union, the wage requirements were vague and ambiguous and because the solicitation did not include sufficient information on contract performance. Leamington also argued that the awardee, Fair Oaks Motel, and other bidders were not responsible prospective contractors. We dismissed Leamington's protest since it was based on alleged solicitation defects required to be protested to this Office or the contracting agency prior to bid opening, Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), and because it

039773

challenged the contracting officer's affirmative determination of responsibility which we do not review absent a showing of fraud or bad faith or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(f)(5).

Leamington argues that since the collective bargaining agreement was referenced in and attached to the solicitation, it believed that the entire collective bargaining agreement would be imposed on the awardee and that the government would require the awardee to be a union firm. According to the protester, it was not until after award that it realized its interpretation was wrong. Thus, it is Leamington's position that the solicitation was ambiguous and vague with respect to which provisions of the collective bargaining agreement applied and that it would have bid differently had it known that a union operation would not be required. The protester does not dispute our dismissal of that part of its protest concerning the awardee's responsibility.

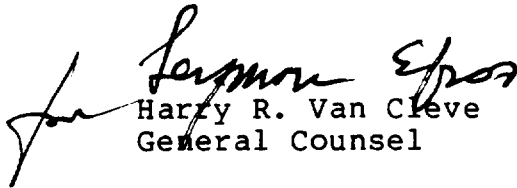
To the extent the protester argues that the solicitation was defective because it did not clearly set forth the provisions of the collective bargaining agreement that would apply to the awardee, that argument was properly dismissed as untimely in our initial decision. To the extent the protester is arguing that the incorporation of the collective bargaining agreement requires that award be made to a firm which conforms to all the terms of the agreement, the protest is denied.

The solicitation did not, as the protester suggests, require a union operation or impose on the awardee the entire collective bargaining agreement, but merely indicated that the wage rates of the collective bargaining agreement would be applicable. The Service Contract Act requires that successor contractors pay service employees the same wage and benefits provided for in a collective bargaining agreement, reached as a result of arms-length negotiations, to which the employees would have been entitled if they were employed under the predecessor contract. Northern Virginia Service Corp., B-224450, et al., Oct. 21, 1986, 86-2 CPD ¶ 439. In fact, the solicitation clause referred to by the protester is titled "Wage Rate" to indicate that the wage rates of the attached collective bargaining agreement should be used in preparing bids. Further, there is no provision of the solicitation requiring the awardee to be a union firm.

Leamington also argues that to the extent any part of its original protest is deemed untimely, it should nevertheless be considered under the significant issue exception to our

timeliness rules set forth at 4 C.F.R. § 21.2(c). This exception is limited to considering untimely protests that raise issues of widespread interest to the procurement community and which have not been considered on the merits in a previous decision. Alpha Parts & Supply, B-225401, Jan. 15, 1987, 87-1 CPD ¶ 62. This protest does not fall within the exception. We see nothing of widespread interest in the protester's rather strained arguments concerning the clarity of this particular solicitation.

The dismissal is affirmed.


Harry R. Van Cleve
General Counsel